

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:21-CV-00048-KDB-DSC**

BENNIE ROBERT ANDERSON,

Plaintiffs,

v.

**SKYLINE NATIONAL BANK
AND PARKWAY ACQUISITION
CORP.,**

Defendants.

ORDER

THIS MATTER is before the Court on Defendants’ request for taxation of costs in this matter. (Doc. No. 71). The Court has carefully considered the Bill of Costs and the parties’ briefs and exhibits in support and in opposition. For the reasons discussed briefly below, the Court will decline to tax the costs against the Plaintiff.

Defendants seek costs in the total amount of \$9465.99, encompassing fees for service of subpoenas (including to their own executives), deposition transcript charges, witness fees and other costs. Rule 54(d) of the Federal Rules of Civil Procedure “creates the presumption that costs are to be awarded to the prevailing party”; however, costs may be denied to the prevailing party when there would be an element of injustice in a presumptive cost award. *Cherry v. Champion Intern. Corp.*, 186 F.3d 442, 446 (4th Cir. 1999), (citing *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 352). Further, Defendants acknowledge that “the ultimate decision to award costs is within the district court’s discretion.” Doc. No. 73 at 2 (citing *M.T. Bonk Co. v. Milton Bradley Co.*, 945 F.2d 1404, 1409 (7th Cir. 1991)).

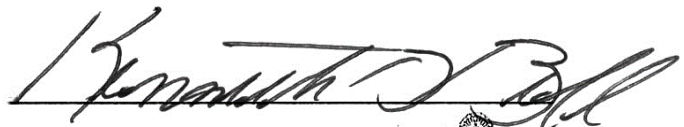
In the exercise of its discretion, the Court finds that, all things considered, Plaintiff has shown circumstances sufficient to overcome the presumption favoring an award of costs. Specifically, the asserted inability of Plaintiff to pay the costs along with the history of the litigiousness of this matter convince the Court that it would be most appropriate for each party to bear their own costs and expenses and that there would be an “element of injustice” in doing otherwise. Accordingly, Defendants’ request for the taxation of costs will be denied.

NOW THEREFORE IT IS ORDERED THAT:

Defendants’ request that the Court tax their costs as described in the Bill of Costs (Doc. No. 71) against Plaintiff is **DENIED**.

SO ORDERED ADJUDGED AND DECREED.

Signed: January 30, 2023

A handwritten signature in black ink, appearing to read "Kenneth D. Bell", written over a horizontal line.

Kenneth D. Bell
United States District Judge

